



STATUTORY INSTRUMENTS.

S.I. No. 625 of 2010



EUROPEAN UNION (DIRECTIVE 2010/76/EU) REGULATIONS 2010

(Prn. A10/1914)

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S.I. No. 625 of 2010

EUROPEAN UNION (DIRECTIVE 2010/76/EU) REGULATIONS 2010

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) (as amended by the European Communities Act 2007 (No. 18 of 2007)), and for the purpose of giving effect to Directive 2010/76/EU¹ of the European Parliament and of the Council of 24 November 2010, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Directive 2010/76/EU) Regulations 2010.

Commencement

2. (1) Regulation 1, this Regulation, paragraphs (1) and (3) of Regulation 3, Schedule 1 and Part 1 of Schedule 3 come into operation on 1 January 2011.

(2) The remainder of these Regulations come into operation on 31 December 2011.

Amendments

3. (1) The European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) are amended as set out in Schedule 1.

(2) The European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006) are amended as set out in Schedule 2.

(3) The European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) are amended as set out in Part 1 of Schedule 3.

(4) The European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006) are further amended as set out in Part 2 of Schedule 3.

¹ O.J. No. L329, 14.12.2010, p. 3.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 28th December, 2010.*

AMENDMENTS OF THE EUROPEAN COMMUNITIES (LICENSING AND SUPERVISION OF
CREDIT INSTITUTIONS) REGULATIONS 1992

Item	Provision amended	Amendment
1	Regulation 16(3)	<p>Substitute:</p> <p>“(3) Subject to paragraph (4), every credit institution shall have robust governance arrangements including—</p> <ul style="list-style-type: none"> (a) a clear organisational structure with well defined, transparent and consistent lines of responsibility, (b) effective processes to identify, manage, monitor and report the risks it is or might be exposed to, (c) adequate internal control mechanisms, (d) without prejudice to the generality of subparagraph (c), sound administrative and accounting procedures; and (e) remuneration policies and practices that are consistent with and promote sound and effective risk management.”.
2	Regulation 16	<p>Insert after paragraph (4):</p> <p>“(5) Credit institutions shall apply the principles laid down in points 23 and 24 of Annex V of the Recast Credit Institutions Directive to:</p> <ul style="list-style-type: none"> (a) remuneration due on basis of contracts concluded before 1 January 2011 and awarded or paid after this date; and (b) remuneration awarded, but not yet paid, before 1 January 2011, for services provided in 2010. (6) The Bank shall use information collected in accordance with the criteria for disclosure set out in point 15(f) of part 2 of Annex XII (as inserted by Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010²) to benchmark remuneration policies and practices. The Bank shall provide the information referred to in this paragraph to CEBS. (7) The Bank shall collect information on the number of individuals per credit institution in pay brackets of at least €1,000,000 including the business area involved and the main elements of salary, bonus, long-term award and pension contribution, and shall forward that information to CEBS.”.

² O.J. No. L329, 14.12.2010, p. 3.

Schedule 2

Regulation 3(2)

AMENDMENTS OF THE EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF
INVESTMENT FIRMS) REGULATIONS 2006

Item	Provision amended	Amendment
1	Regulation 2	After the definition of “securities or commodities lending,” insert: “securitisation position” and “re-securitisation position” mean, respectively, securitisation position and re-securitisation position as defined in the Recast Credit Institutions Directive;”.
2	Regulation 15(1)	Substitute: <p>“15.—(1) Where an institution calculates risk-weighted exposure amounts for the purposes of Annex II to the recast Directive (IF) in accordance with Chapter 3 of Part 4 of the CRD Regulations (CI), for the purposes of the calculation provided for in point 36 of Part 1 of Annex VII to the Recast Credit Institutions Directive, the following shall apply:</p> <p>(a) value adjustments made to take account of the credit quality of the counterparty may be included in the sum of value adjustments and provisions made for the exposures indicated in Annex II to the recast Directive (IF),</p> <p>(b) subject to the approval of the Bank, if the credit risk of the counterparty is adequately taken into account in the valuation of a position included in the trading book, the expected loss amount for the counterparty risk exposure shall be zero.”.</p>
3	Regulation 16(1)(a)	Substitute: <p>“(a) the capital requirements, calculated in accordance with the methods and options laid down in Chapter 4 of Part 5 of the CRD Regulations (IF) and Annexes I, II, and VI and, as appropriate, Annex V, for their trading book business, and points 1 to 4 of Annex II for their non-trading book business, and”.</p>
4	Regulation 42	Substitute: <p>“Transitional provisions—specific risk model recognition prior to 1 January 2007.</p> <p>42.—Until 31 December 2011 or any earlier date specified by the Bank on a case by case basis, institutions that have received specific risk model recognition prior to 1 January 2007, in accordance with point 1 of Annex V to the recast Directive (IF) may, for that existing recognition, treat points 4 and 8 of Annex VIII to Council Directive 93/6/EEC of 15 March 1993³ as those points stood prior to 1 January 2007.”.</p>

³ O J. No. L141, 11.6.1993, p. 1.

AMENDMENTS OF THE EUROPEAN COMMUNITIES (CAPITAL ADEQUACY OF CREDIT INSTITUTIONS) REGULATIONS 2006

Part 1

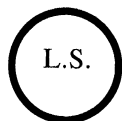
AMENDMENTS COMING INTO OPERATION ON 1 JANUARY 2011

1	Regulation 82	<p>Insert after paragraph (5):</p> <p>“(5A) Credit institutions calculating risk-weighted exposure amounts in accordance with Chapter 3 of Part 4 shall until 31 December 2011 provide own funds which are at all times more than or equal to the amount indicated in paragraph (5C) or paragraph (5D) if applicable.</p> <p>(5B) Credit institutions using the Advanced Measurement Approaches as specified in Regulation 51 for the calculation of their capital requirements for operational risk shall until 31 December 2011 provide own funds which are at all times more than or equal to the amount indicated in paragraph (5C) or paragraph (5D) if applicable.</p> <p>(5C) The amount referred to in paragraphs (5A) and (5B) shall be 80% of the total minimum amount of own funds that the credit institutions would be required to hold under Article 4 of Directive 93/6/EEC and Directive 2000/12/EC, as applicable prior to 1 January 2007.</p> <p>(5D) Subject to the approval of the Bank, for credit institutions referred to in paragraph (5E), the amount referred to in paragraphs (5A) and (5B) may amount to up to 80 per cent of the total minimum amount of own funds that those credit institutions would be required to hold under any of Chapter 2 of Part 4, Regulations 49 and 50 and Directive 2006/49/EC, as applicable prior to 1 January 2011.</p> <p>(5E) A credit institution may apply paragraph (5D) only if it started to use the IRB Approach or the Advanced Measurement Approaches for the calculation of its capital requirements on or after 1 January 2010.”.</p>
2	Regulation 84(6)	<p>Substitute:</p> <p>“(6) Until 31 December 2012, the exposure weighted average LGD for all retail exposures secured by residential properties and not benefiting from guarantees from central governments shall not be lower than 10%.”.</p>

AMENDMENTS COMING INTO OPERATION ON 31 DECEMBER 2011

Item	Provision amended	Amendment
1	Regulation 3(2)(j)	Substitute: “(j) the exposure amount of securitisation positions which receive a risk weight of 1,250% under the Recast Credit Institutions Directive and the exposure amount of securitisation positions in the trading book that would receive a 1,250% risk weight if they were in the same credit institution’s non-trading book, and”.
2	Regulation 9	Insert after paragraph (5): “(6) Credit institutions shall apply the requirements of Part B of Annex VII to Directive 2006/49/EC to all their assets measured at fair value when calculating the amount of own funds and shall deduct, from the total of the items referred to in subparagraphs (a), (b) and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2), the amount of any additional value adjustments necessary.”.
3	Paragraphs (2) to (4) of Regulation 11	Substitute: “(2) The total of the items referred to in subparagraphs (d) to (k) of Regulation 3(2) shall be deducted as follows: (a) half from the total of the items referred to in subparagraphs (a), (b) and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2); (b) half from the total of the items referred to in subparagraphs (c), (d) and (e) of Regulation 3(1), after the application of the limits set out in paragraph (1). (3) To the extent that half of the total of the items referred to in subparagraphs (d) to (k) of Regulation 3(2) exceeds the total of the items referred to in subparagraphs (c), (d) and (e) of Regulation 3(1), the excess shall be deducted from the total of the items referred to in subparagraphs (a), (b) and (ba) of Regulation 3(1) minus the total of the items referred to in subparagraphs (a), (b) and (c) of Regulation 3(2). (4) The item referred to in subparagraph (j) of Regulation 3(2) shall not be deducted if it has already been included in the calculation of risk-weighted exposure amounts for the purposes of Regulation 19 for the purposes of these Regulations or in the calculation of capital requirements as specified in Annex I or V to Directive 2006/49/EC.”.
4	Regulation 19 points (b) and (c)	Substitute: “(b) in respect of their trading-book business, for position risk and counter-party risk and, in so far as it is authorised that the limits laid down in Regulations 57 to 60A are exceeded, for large exposures exceeding such limits, the capital requirements determined in accordance with Regulation 16 of the CRD Regulations (IF) and Chapter 4 of Part 5 of the CRD Regulations (IF), (c) in respect of all their business activities, for foreign exchange risk, for settlement risk and for commodities risk, the capital requirements determined in accordance with Regulation 16 of the CRD Regulations (IF), and”.
5	Regulation 47(1)	Substitute: “47.—(1) A sponsor credit institution, or an originator credit institution which in respect of a securitisation has made use of Regulation 41 in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to a securitisation special purpose entity to the effect that it is no longer required to hold own funds for the risks of those instruments shall not, with a view to reducing potential or actual losses to investors, provide support to the securitisation beyond its contractual obligations.”.

Item	Provision amended	Amendment
6	Regulation 70(2)	Insert after sub-paragraph (d): “(e) requiring the reduction of the risk inherent in the activities, products and systems of credit institutions, (f) requiring credit institutions to limit variable remuneration as a percentage of total net revenues when it is inconsistent with the maintenance of a sound capital base, (g) requiring credit institutions to use net profits to strengthen the capital base.”.
7	Regulation 70	Insert after paragraph (4): “(5) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Regulation 66, the Bank shall assess whether any imposition of a specific own funds requirement in excess of the minimum level is required to capture risks to which a credit institution is or might be exposed, taking into account the following: (a) the quantitative and qualitative aspects of the credit institutions’ assessment process referred to in Regulation 65, (b) the credit institutions’ arrangements, processes and mechanisms referred to in Regulation 16 of the European Communities (Licensing and Supervision) Regulations 1992, (c) the outcome of the review and evaluation carried out in accordance with Regulation 66.”.
8	Regulation 72(3)	Substitute: “(3) Credit institutions shall adopt a formal policy to comply with the disclosure requirements laid down in paragraphs (1) and (2), and have policies for assessing the appropriateness of their disclosures, including their verification and frequency. Credit institutions shall also have policies for assessing whether their disclosures convey their risk profile comprehensively to market participants. (4) Where those disclosures do not convey the risk profile comprehensively to market participants, credit institutions shall publicly disclose the information necessary in addition to that required in accordance with paragraph (1). However, they shall only be required to disclose information which is material and not proprietary or confidential in accordance with the technical criteria set out in Part 1 of Annex XII of the Recast Credit Institutions Directive.”.



GIVEN under the Official Seal of the Minister for Finance,
21 December 2010.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Statutory Instrument transposes Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies.

The Statutory Instrument amends the following instruments: the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992); the European Communities (Capital Adequacy of Investment Firms) Regulations 2006 (S.I. No. 660 of 2006); and the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).

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